Budapest Convention, Second Additional Protocol

Data Protection Safeguards, Article 14

Ralf Sauer, European Commission, General-Directorate for Justice and Consumers
Context/background

- Collection of information concerning individuals related to criminal offences (perpetrators, victims, witnesses, etc.) = personal data

- Most Parties have legal requirements to protect personal data, often as a human/fundamental right and with rules on intl data transfers

- Important from the perspective of the protection of human rights, but also because it benefits effective law enforcement

- No absolute right: restrictions possible, but must themselves be limited (proportionality principle)
Data protection safeguards - overview

- **Scope of application**, para 1
- **Substantive safeguards**, paras 2-12
- **Procedural safeguards**, paras 13-14
- **Suspension clause**, para 15
Data protection safeguards – scope of application

• **Relationship** between Art 14 and possible alternative arrangements, in particular CoE Convention 108+

• **Legal effect** of applying Art 14 safeguards as regards domestic legal requirements for the transfer of personal data

• Possibility to ensure an even **higher level of protection** for the processing of data by a Party’s own public authorities (including data obtained under Protocol)

• See also **Art 3(2)(d)** on the **definition of “personal data”**
Data protection safeguards – substantive safeguards

- **Principles**: purpose limitation, lawfulness, data minimisation, data quality, limited data retention

- **Obligations**: transparency, specific safeguards for sensitive data, data security/data breach notification, safeguards w/re fully automated (algorithmic) decisions

- **Individual rights**: access (including possible limitations), rectification (including erasure where appropriate and reasonable)

- **Onward sharing** (within Party) and **onward transfers** (with other country)
Data protection safeguards – procedural safeguards

- Independent oversight
- Effective non-judicial + judicial redress
Data protection safeguards - suspension

- Right of each Party to suspend data transfers to another Party in case of “substantial evidence of a systematic or material breach”
- Procedural requirements, in particular prior consultation (unless emergency)
Assessment of implementation, Art 23

- **General requirement** under the Convention/Protocol based on Art 46 of the Convention and Cybercrime Ctte RoP

- **Periodic assessment** of “effective use and implementation”

- **Specific requirement to review Art 14** once 10 Parties to the Convention have ratified

Important tool ensure data protection becomes reality “on the ground” (complemented by capacity building, GLACY+)
Conclusion and Outlook

- Safeguards reflect **emerging global standard** and are **largely aligned with CoE Convention 108+**

- Could pave the way for increasing **convergence of the membership** between the **Budapest Convention/Protocol** and the **Convention 108+**

- Protocol establishes **data protection as a central element of law enforcement** (and cross-border law enforcement cooperation), for the Parties and beyond
Thank you

© European Union 2020

Unless otherwise noted the reuse of this presentation is authorised under the CC BY 4.0 license. For any use or reproduction of elements that are not owned by the EU, permission may need to be sought directly from the respective right holders.

Slide xx: element concerned, source: e.g. Fotolia.com; Slide xx: element concerned, source: e.g. iStock.com